

(3) Supreme Court, U.S.  
FILED

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No.

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In The  
**Supreme Court of the United States**

MARK A. GLASS and  
MARK A. GLASS ENTERPRISES, INC., *et al.*,

*Petitioners,*

v.

CAGLE FOODS JV, LLC,

*Respondent.*

On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Eleventh Circuit

**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

- I. Whether the Packers and Stockyards Act's prohibition of "any unfair, unjustly discriminatory, or deceptive practice" extends to all such practices (as the Ninth and Tenth Circuits hold) or only to practices that also have or are likely to have an adverse effect on competition (as the Seventh and Eleventh Circuits hold).
- II. Whether by requiring proof of intentional discrimination to sustain an action under the Packers and Stockyards Act, the Eleventh Circuit misconstrued the plain language of the statute and prior decisions of this Court.
- III. Whether the Eleventh Circuit so far departed from the standards of Rule 56 of the Federal Rules of Civil Procedure in affirming summary judgment under the facts of these cases that this Court should exercise its supervisory authority to reverse the circuit court decisions.

## **LIST OF PARTIES**

**Petitioners include:**

**Mark A. Glass  
Mark A. Glass Enterprises, Inc.  
Travis Mims  
Lucius Adkins  
Jill Adkins  
Richard E. Wheeler, III**

**Respondent is:**

**Cagle Foods JV, LLC**

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Supreme Court Rule 39.6, Mark A. Glass and Mark A. Glass Enterprises, Inc. state that Mark A. Glass Enterprises, Inc. is a privately held Georgia corporation. There are no parent corporations or publicly held companies owning 10% or more of Petitioner's stock.

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Barry Shlachter, <i>Contract growers hoping the chicken industry offers a steady nest egg may instead be trapped by debt</i> , at <a href="http://www.newfarm.org/news/2005/0405/040505/contracts.print.shtml">http://www.newfarm.org/news/2005/0405/040505/contracts.print.shtml</a> .....	17
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Henry A. Wallace Center for Agricultural & Environmental Policy, <i>The Effect of Laws that Foster Agricultural Bargaining: The Case of Apple Growers in Michigan and New York State</i> .....	18
Jim Cullin, <i>Poultry Growers Seek Rights in Mississippi</i> , at <a href="http://www.populist.com/4.96.Poultry.html">http://www.populist.com/4.96.Poultry.html</a> .....	17
Karen Chapman, <i>Down on the Farm: Modern Day Sharecroppers</i> , at <a href="http://www.tompaine.com/feature.cfm/ID/5036">http://www.tompaine.com/feature.cfm/ID/5036</a> .....	17
Marc Linder, <i>I Gave My Employer a Chicken That Had No Bone: Joint Firm-state Responsibility for Line-Speed-Related Occupational Injuries</i> , 46 Case Western L. Rev. 33 (1995).....	16

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Michael Donohue, <i>The Importance and Value of America's Poultry Farms</i> , at <a href="http://www.nationalchicken council.com/aboutIndustry/detail.cfm?id=20">http://www.nationalchicken council.com/aboutIndustry/detail.cfm?id=20</a> .....	16
The Baltimore Sun, Feb. 28, 1999, <i>The Plucking of the American Chicken Farmer</i> at <a href="http://www.agribusinessaccountability.org/page/220">http://www.agribusinessaccountability.org/page/220</a> .....	17
The Baltimore Sun, March 1, 1999, <i>Taking a Stand, Losing the Farm</i> .....	17
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United Poultry Growers Association at <a href="http://www.unitedpoultrygrowers.com">www.unitedpoultrygrowers.com</a> .....	9
Winston-Salem Journal, <i>Killing Floor Tales: Poultry Growers at Mercy of Industrialized Agriculture and Short, Tenous Contracts Drawn up by Food Giants</i> , at <a href="http://www.poultry.org/labor_winston.html">http://www.poultry.org/labor_winston.html</a> .....	17

## PETITION FOR A WRIT OF CERTIORARI

Petitioners, Mark A. Glass, Mark A. Glass Enterprises, Inc., Lucius Adkins, Jill Adkins, Travis Mims, and Richard E. Wheeler, III, jointly seek a writ of certiorari to review the judgments of the United States Court of Appeals for the Eleventh Circuit in these cases.

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### OPINIONS BELOW

The unreported opinion of the Eleventh Circuit in *Glass v. Cagle's, Inc., et al.*, is reprinted in the appendix at App. 1-5. The opinion (App. 11-25) in *Adkins v. Cagle's, Inc., et al.*, is reported at 411 F.3d 1320 (11th Cir. 2005). The unreported opinion (App. 26-39) in *Mims v. Cagle Foods* is available at WL 1400259 (M.D. Ga. 2005). The unreported opinion (App. 6-10) in *Wheeler v. Cagle Foods* is available at WL 1349857 (M.D. Ga. 2005).

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### JURISDICTION

The judgment of the court of appeals in *Glass* was entered on April 5, 2005, and the court denied Glass' rehearing *en banc* on June 1, 2005. (App. 123) The judgment of the court of appeals in *Adkins* was entered on June 13, 2005. The judgment of the court of appeals in *Mims* was entered on June 15, 2005. The judgment of the court of appeals in *Wheeler* was entered on June 8, 2005.

Justice Kennedy extended the time to file the petitions in each case: *Glass* (Application No. 05A180) until September 29, 2005; *Wheeler* (Application No. 05A197) until October 6, 2005; *Adkins* (Application No. 05A219)

until October 11, 2005; and *Mims* (Application No. 05A220) until October 13, 2005.

This Court has jurisdiction under 28 U.S.C. §1254(1).

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### **STATUTORY PROVISIONS INVOLVED**

Section 202 of the Packers and Stockyards Act (PSA) provides:

It shall be unlawful for any packer or swine contractor with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to:

- (a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; or
- (b) Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect; or
- (c) Sell or otherwise transfer to or for any other packer, swine contractor, or any live poultry dealer, or buy or otherwise receive from or for any other packer, swine contractor, or any live poultry dealer, any article for the purpose or with the effect of apportioning the supply between any such persons, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly; or
- (d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or

with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or

(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business, or (2) to apportion purchases or sales of any article, or (3) to manipulate or control prices; or

(g) Conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivisions (a), (b), (c), (d), or (e) of this section.

7 U.S.C. §192.

Section 2303 of the Agricultural Fair Practices Act provides:

It shall be unlawful for any handler knowingly to engage or permit any employee or agent to engage in the following practices:

(a) To coerce any producer in the exercise of his right to join and belong to or refrain from joining or belonging to an association of producers, or to refuse to deal with any producer because of the exercise of his right to join and belong to such an association; or

(b) To discriminate against any producer with respect to price, quantity, quality, or other terms